

EXHIBIT H

Fax Transmission

To: Dentaquest obo Nascentia

From: saratogafax@lasnny.org

Fax: 13158707788

Date: 7/25/2023 9:41:26 AM EDT

RE: appeal request

Pages: 18

Comments:

Please see enclosed expedited appeal request with enclosures.

Thank you,
Yoana



40 New Street, Saratoga Springs, New York 12866
(833) 628-0087 | (518) 587-5188 | Fax: (518) 587-0959

This office serves Saratoga, Warren and Washington Counties

James E. Hacker
President

Nic Rangel, Esq.
Executive Director

Peter D. Racette
Deputy Director

Wendy Wahlberg
Deputy Director

Erica Ludwick
Deputy Director

July 25, 2023

Via facsimile to: 315-870-7788

DentaQuest o/b/o
Nascentia Health Options
1050 West Genesee Street
Syracuse New York 13204

REQUEST FOR FAST TRACK/EXPEDITED PLAN APPEAL

In re: Jessica McKenna, [REDACTED], DOB:
[REDACTED], Enrollee Number 10000396; ph.no.: (518) 573-7269.

Dear DentaQuest:

Our office represents your enrollee Ms. Jessica McKenna. We are in receipt of your Initial Adverse Determination Denial Notice Dated June 14, 2023, with plan reference number: 202316426198401. We hereby request an expedited/fast track appeal of the determination, because Ms. McKenna's conditions are deteriorating due to the lack of dentition. A letter from Ms. McKenna's healthcare provider explaining her health issues and the need for expedited appeal is enclosed herein as Exhibit A.

On June 13, 2023, Dr. Ference requested approval for the following services: D7950 facial surgery for Upper Left Quadrant and Upper Right Quadrant; and D7951 sinus augmentation for Upper Left Quadrant and Upper Right Quadrant.

We hereby request reversal of the denial and approval of the services.

According to the NY State Medicaid Dental Policy and Procedure Code Manual procedure codes D7950 and D7951 are services covered under the Medicaid plan. See pg. 58, 70 of the Manual. See Exhibit B.

In your Denial Notice you state that: "On June 14, 2023, DentaQuest on behalf of Nascentia Health Options decided to deny this service because: the service can be provided by a participating provider."

"The decision was based on:

- Services are only covered by your Health Plan for in network dentists. Our records do not show that your dentist is in our provider network.

You may contact us for a dentist that is in network in your area. We have also told your dentist.”

This statement is both incorrect and renders your notice a legal nullity. You have failed to comply with the requirements for adequate notice under 18 NYCRR 358-3.3(a) and 18 NYCRR 358-2.2(a). It is also incorrect and misleading to claim that Ms. McKenna’s health plan only covers in network dentists, for the reasons more fully described below. Additionally, Ms. McKenna has reached out on numerous occasions to the plan to find in network dentists. No dentists specializing in prosthodontics, dental anesthesia and implants are available in network in her area. Should there be a participating provider with such specializations in Ms. McKenna’s area, please notify us immediately.

The only referral that was ever given to Ms. McKenna for an in-network provider was for a clinic in Schenectady, New York – Hometown Health Centers. They provide only primary and preventative care. They do not have specialists on staff that Ms. McKenna requires due to her complex medical conditions, including but not limited to prosthodontists and dental anesthesiologists. Ms. McKenna’s providers have also opined that due to her medical conditions she requires specialized care which cannot be rendered in a clinical setting. Please see enclosed medical notes from Ms. McKenna’s primary care provider Amanda A. Devine, NP and from Dr. Ference confirming that the surgeries and procedures which Ms. McKenna needs are not appropriate for a clinic setting, and that given her complicated medical history she requires the care of a specialist. See Exhibit C.

As a health plan, you have an obligation to provide your enrollees with adequate care to address their medical needs, including dental needs. Section 506.2(a) of 18 NYCRR provides that dental care in the Medical Assistance program shall include dental prosthetic and orthodontic appliances required to alleviate a serious health condition including one which affects employability. In order for Medicaid to cover dental implants and implant related services, the request for prior approval must include a letter from the patient’s physician explaining how implants will alleviate the patient’s medical condition and a letter from the patient’s dentist explaining why other covered functional alternatives for prosthetic replacement will not correct the patient’s dental condition. New York State Medicaid Program Provider Manual for Dental Procedure Codes Section VIII.

Here, Ms. McKenna has fully complied with the legal requirements for the services to be approved. She has provided a pre-authorization request in which both her dentists and her physician’s office explain how implants will alleviate her medical conditions, and why other covered functional alternatives for prosthetic replacement will not correct her dental condition(s). Notably, Ms. McKenna’s teeth have been extracted, she is unable to tolerate removable dentures due to her medical

conditions, which leave implants and related bridgework as the only viable option for restoring her dentition.

Further, The Medicaid Managed Care/Family Health Plus/HIV Special Needs Plan Model Contract, which you as Medicaid Contractor are bound by, advises, in relevant part: if the Contractor “does not have a Participating Provider with *appropriate training and experience* to meet the particular health care needs of an Enrollee, the Contractor shall make a referral to an appropriate Non-Participating Provider, pursuant to a treatment plan approved by the Contractor in consultation with the Primary Care Provider, the Non-Participating Provider and the Enrollee or the Enrollee’s designee. The Contractor shall pay for the cost of the services in the treatment plan provided by the Non-Participating Provider for as long as the Contractor is unable to provide the service through a Participating Provider.” (emphasis added.)

Also, the Nascentia Health Options Member Handbook states that Nascentia approves dental prior authorizations for services. See page 15-16 of the Handbook. The Handbook expressly states that if no in network providers are available “Nascentia Health Options will work with providers outside of our network for you to get medically necessary services that are covered.” See Handbook pg. 5.

Because no in network providers are available to meet Ms. McKenna’s specialized needs, and Ms. McKenna’s dental and primary care provider have proposed an appropriate treatment plan for medically necessary services, her treatment with the non-participating provider should be approved.

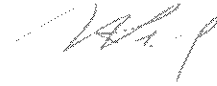
Further, there is no doubt that Ms. McKenna’s lack of dentition affects her employability, because she is a chef by profession, thus both the medical necessity to alleviate a serious health condition and the employability criteria of Section 506.2(a) of 18 NYCRR are met.

For the foregoing reasons, we respectfully request that you review Ms. McKenna’s case and rescind your Initial Adverse Determination Denial Notice dated June 13, 2023. We request that the services requested by Dr. Ference be approved as necessary out of network treatment for Ms. McKenna. We believe expedited review of our appeal request is appropriate as Ms. McKenna’s health continues to deteriorate daily due to pain and malnutrition, caused by the absence of adequate dentition.

We are enclosing here a letter from Dr. Ference which explains the complexity of Ms. McKenna’s case and the need for specialized treatment, and a letter from her primary care provider attesting the same. Exhibit C. We are also enclosing relevant parts of the Nascentia Handbook for your review. Exhibit D.

Should you need any additional information about this appeal, please contact the undersigned attorney at (518)587-5188, ext. 446.

Respectfully Submitted:



Legal Aid Society of
Northeastern New York, Inc.
*Attorneys for Jessica
McKenna*
by Yoana Kostadinova, Esq.
Senior Attorney
40 New Street
Saratoga Springs NY 12866

YNK

Encl.

Cc: Jessica McKenna

EXHIBIT A

7/20/23, 3:46 PM

MyChart - Letters

Name: Jess McKenna | DOB: [REDACTED] | MRN: E3309263 | PCP: Amanda A Devine, NP | Legal Name: Jessica McKenna

Letter Details



**UR MEDICINE
COMPLEX CARE
CENTER
905 CULVER RD
ROCHESTER NY
14609-7115
Dept: 585-276-7900
Dept Fax: 585-288-
1381**

July 20, 2023

To Whom It May Concern:

Jessica McKenna is seen and treated at Complex Care Center for management of POTS Syndrome (G90.0), Gastroparesis (K31.84), PRSS1 (K86.1), and Cystic Fibrosis (E84.9). As a result of her disease processes, Jessica suffers significant mouth pain and dental decay. She has required extensive surgical repairs by her dental provider, Adela Planerova, DDS to correct this. In return, she requires the use of permanent dental implants to maintain adequate food and liquid consumption.

Due to Jessica's underlying medical conditions, her disease limits the ability to tolerate and manage a removable denture option. In my professional medical opinion, I would recommend an **expedited appeal**, to prevent additional impact on Jessica's declining health and overall wellbeing.

If you have further questions please don't hesitate to call.

Sincerely,

Amanda A Devine, NP

Electronically signed by Amanda A Devine, NP 7/20/2023 3:22 PM

This letter was initially viewed by Jess McKenna at 7/20/2023 3:24 PM.

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EXHIBIT B

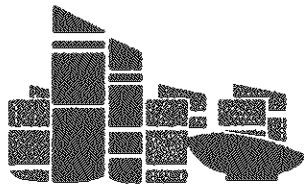
Dental Policy and Procedure Code Manual

<u>CODE</u>	<u>DESCRIPTION</u>	
	edentulous tooth position in same graft site (TOOTH) (PA REQUIRED) (POST OPERATIVE CARE: 14 DAYS) Used in conjunction with D4277.	
<u>D4283</u>	Autogenous connective tissue graft procedure (including donor and recipient surgical sites) – each additional contiguous tooth, implant or edentulous tooth position in same graft site (TOOTH) (PA REQUIRED) (POST OPERATIVE CARE: 14 DAYS) Used in conjunction with D4273.	\$202.00
<u>D4285</u>	Non-autogenous connective tissue graft procedure (including recipient surgical site and donor material) – each additional contiguous tooth, implant or edentulous tooth position in same graft site. (TOOTH) (PA REQUIRED) (POST OPERATIVE CARE: 14 DAYS) Used in conjunction with D4275.	\$303.00
The following procedure codes are a covered benefit only when associated with an implant or an implant-related service: <u>D7951</u> , <u>D7952</u> , <u>D7953</u> .		
<u>D7951</u>	Sinus augmentation with bone or bone substitutes via a lateral open approach (QUAD) (PA REQUIRED) (POST OPERATIVE CARE: 14 DAYS) The augmentation of the sinus cavity to increase alveolar height for reconstruction of edentulous portions of the maxilla. This procedure is performed via a lateral open approach. This includes obtaining the bone or bone substitutes. Placement of a barrier membrane if used should be reported separately.	\$808.00
<u>D7952</u>	Sinus augmentation with bone or bone substitutes via a vertical approach (QUAD) (PA REQUIRED) (POST OPERATIVE CARE: 14 DAYS) The augmentation of the sinus to increase alveolar height by vertical access through the ridge crest by raising the floor of the sinus and grafting as necessary. This includes obtaining the bone or bone substitutes.	\$808.00
<u>D7953</u>	Bone replacement graft for ridge preservation – per site (TOOTH) (PA REQUIRED) (POST OPERATIVE CARE: 10 DAYS) Graft is placed in an extraction or implant removal site at the time of the extraction or removal to preserve ridge integrity (e.g., clinically indicated in preparation for implant reconstruction or where alveolar contour is critical to planned prosthetic reconstruction). Does not include obtaining graft material. Membrane, if used should be reported separately.	\$252.50

Dental Policy and Procedure Code Manual

CODE	DESCRIPTION	
D7947	LeFort I (maxilla-segmented) (REPORT NEEDED) (POST OPERATIVE CARE: 90 DAYS) When reporting a surgically assisted palatal expansion without downfracture, this code would entail a reduced service and should be "by report" using procedure code D7999.	\$2,929.00
D7948	LeFort II or LeFort III (osteoplasty of facial bones for midface hyperplasia or retrusion) - without bone graft (REPORT NEEDED) (POST OPERATIVE CARE: 90 DAYS)	\$2,929.00
D7949	LeFort II or LeFort III with bone graft (REPORT NEEDED) (POST OPERATIVE CARE: 90 DAYS)	\$3,514.80
D7950	Osseous, osteoperiosteal, or cartilage graft of the mandible or maxilla - autogenous or nonautogenous, by report (REPORT NEEDED) (POST OPERATIVE CARE: 90 DAYS)	(BR)
D7961	Buccal / labial frenectomy (frenulectomy) (ARCH) (REPORT NEEDED) (POST OPERATIVE CARE: 14 DAYS) Removal or release of mucosal and muscle elements of a buccal/labial frenum that is associated with a pathological condition or interferes with proper oral development or treatment.	\$191.90
D7962	Lingual frenectomy (frenulectomy) (ARCH) (REPORT NEEDED) (POST OPERATIVE CARE: 14 DAYS) Removal or release of mucosal and muscle elements of a lingual frenum that is associated with a pathological condition or interferes with proper oral development or treatment.	\$191.90
D7970	Excision of hyperplastic tissue- per arch (ARCH) (REPORT NEEDED) (POST OPERATIVE CARE: 14 DAYS)	\$151.50
D7971	Excision of pericoronal gingiva (TOOTH) (REPORT NEEDED) (POST OPERATIVE CARE: 10 DAYS) All claims will be pended for professional review.	\$60.60
D7972	Surgical reduction of fibrous tuberosity (QUAD) (REPORT NEEDED) (POST OPERATIVE CARE: 14 DAYS)	(BR)
D7980	Surgical sialolithotomy (POST OPERATIVE CARE: 14 DAYS)	\$292.90
D7981	Excision of salivary gland, by report (REPORT NEEDED) (POST OPERATIVE CARE: 30 DAYS)	(BR)
D7982	Sialodochoplasty (REPORT NEEDED) (POST OPERATIVE CARE: 30 DAYS)	\$834.26
D7983	Closure of salivary fistula (REPORT NEEDED) (POST OPERATIVE CARE: 30 DAYS)	(BR)
D7990	Emergency tracheotomy	\$732.25
D7991	Coronoidectomy (REPORT NEEDED) (POST OPERATIVE CARE: 60 DAYS)	\$556.51
D7997	Appliance removal (not by dentist who placed appliance), includes removal of archbar (REPORT NEEDED) (POST OPERATIVE CARE: 14 DAYS) Not for removal of orthodontic appliances. Includes both arches, if necessary.	(BR)
D7998	Intraoral placement of a fixation device not in conjunction with a fracture (REPORT NEEDED) Includes both arches, if necessary.	(BR)

EXHIBIT C



CAPITAL
REGION

Periodontics & Dental Implants

Reed Ference DDS, M. DENT. SC
Sean Ference DDS, M. DENT. SC

838 Western Ave
Albany, NY 12203

(518) 489-3201

www.albanyperioandimplants.com

To Whom it May Concern,

My patient Jessica McKenna requires additional multi-phase surgeries to restore her to a full and functioning dentition. This requires regrowth of bone in the maxilla, as well as the sinus, an extensive healing period, and accurate placement of dental implants to support a fixed denture. These surgeries are difficult and complex and require someone with experience as they need to be successful the first time around.

In addition, Jessica requires IV sedation due to her complicated medical history and the length of each surgery. We have a relationship with a dental anesthesiologist who has successfully worked with Jessica in the past that will be assisting us with her upcoming surgeries.

Due to the complexity of her case and her complicated medical history, I believe Jessica's treatment would not be best served in a clinic setting. She would benefit from being seen in a private practice by an experienced surgeon that knows her. I believe changing doctors' mid treatment would be detrimental to her health and the success of the surgeries.

I ask you to please consider allowing her to continue care in our office. If you have any questions about her care here, please feel free to reach out.

Sincerely,

Sean Ference D.D.S.

Sean Ference DDS

838 Western Ave
Albany, NY 12203

(518) 489-3201

www.albanyperioandimplants.com

7/10/23, 9:00 AM

MyChart - Letters

Name: Jess McKenna | DOB: 11/1/1986 | MRN: E3309263 | PCP: Amanda A Devine, NP | Legal Name: Jessica McKenna

Letter Details

**Name:** Jessica McKenna**MRN:** E3309263**Date of Birth:** [REDACTED]

July 7, 2023

To Whom It May Concern,

I am writing on behalf of my patient, Jessica McKenna as her primary care provider at the Complex Care Center. Given Jessica's issues and teeth loss she has had to maintain a soft/liquid diet which has complicated and worsened her nutritional status. She requires nutritional supplements to provide the necessary nutrients to maintain health as a result of tooth loss, I do not believe this to be related to malabsorption from underlying conditions at this time as we are able to provide appropriate pancreatic enzyme dosing.

It is also my professional opinion that the type of surgeries and procedures Jessica has required to restore her dental health are not appropriate for a clinic setting. Given her complicated medical history she requires the care of a specialist.

Sincerely,

Amanda A Devine, NP

CC:

No Recipients

7/10/23, 9:00 AM

MyChart - Letters

This letter was initially viewed by Jess McKenna at 7/7/2023 11:52 AM.

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EXHIBIT D

Care Management Services

As a member of our plan, you will get Care Management Services. Our plan will provide you with a care manager who is a health care professional – usually a nurse or a social worker. Your care manager will work with you and your doctor to decide the services you need and develop a care plan. Your care manager will also arrange appointments for any services you need and arrange for transportation to those services. When you join Nascentia Health Options you will be assigned to a Care Manager. This person will assist in arranging and coordinating care within and outside of our provider network. We will collaborate with your physician on your plan of care to ensure that you have the services you need to remain safely at home. **Your physician will be asked to provide signed orders for your services.** With Nascentia Health Options if you need home care, home delivered meals, or see a dentist your Care Manager will help you arrange it.

Nascentia Health Options is available to you every day and night. If you need to speak to someone after hours or weekends, contact our on-call staff at 888-477-HOME (4663) to assist you.

Additional Covered Services

Because you have Medicaid and qualify for MLTC, our plan will arrange and pay for the extra health and social services described below. You may get these services as long as they are medically necessary, that is, they are needed to prevent or treat your illness or disability. Your care manager will help identify the services and providers you need. In some cases, you may need a referral or an order from your doctor to get these services. You must get these services from the providers who are in Nascentia Health Options network. If you cannot find a provider in our plan and there are no additional providers available in Nascentia Health Options network, Nascentia Health Options will work with providers outside of our network for you to get medically necessary services that are covered.

Should your provider decide to leave Nascentia Health Options network and you are in an ongoing course of treatment, you may continue with that provider as we transition you to another within our network. Your care with that provider will continue for up to 90 days if the provider accepts payment at the plan rate, adheres to plan quality assurance and other policies, and provides medical information about the care to the plan.

- **Outpatient Rehabilitation**
- **Personal Care** (such as assistance with bathing, eating, dressing, toileting and walking)
- **Home Health Care Services Not Covered by Medicare** including nursing, home health aide, occupational, physical and speech therapies
- **Nutrition**
- **Medical Social Services**
- **Home Delivered Meals and/or meals in a group setting such as a day care**
- **Social Day Care**
- **Non-Emergency Transportation**
- **Private Duty Nursing**

- **Dental**
- **Social/Environmental Supports** (such as chore services, home modifications or respite)
- **Personal Emergency Response System**
- **Adult Day Health Care**
- **Nursing Home Care not covered by Medicare** (*provided you are eligible for institutional Medicaid*)
- **Audiology**
- **DME**
- **Medical Supplies**
- **Prosthetics and Orthotics**
- **Optometry**
- **Consumer Directed Personal Assistance Services**
- **Podiatry**
- **Respiratory Therapy**

Person Centered Service Planning and Care Management

Upon enrollment, you will be assigned a Care Manager who will assist you to access necessary covered services as identified in your person-centered service plan. (PCSP) It also provides referral and coordination of other services in support of your PCSP Care management services will assist you to obtain needed medical, social, educational, psychosocial, financial and other services in support of the PCSP even if the needed services are not covered under Nascentia Health Options.

Home Care Services (Nursing, Therapy, Home Health Aide and Personal Care)

Home care is one of the key components to maintaining you in your home and community. Your Care Manager will assess your home care needs and determine the frequency that you will require these services. They will authorize the amount of service that is determined to meet your medical and personal care needs. Home care includes the following services which are of a preventive, therapeutic rehabilitative, health guidance and/or supportive nature: nursing services, home health aide services, nutritional services, social work services, physical therapy, occupational therapy and speech/language pathology.

Nursing Services

Include intermittent, part-time and continuous nursing services provided in accordance with an ordering physician's treatment plan as outlined in the physician's recommendation. Nursing services must be provided by RNs and LPNs in accordance with the Nurse Practice Act. Nursing services include care rendered directly to the individual and instructions to his family or caretaker in the procedures necessary for the patient's treatment or maintenance.

Physical Therapy (PT)

Rehabilitation services provided by a licensed and registered physical therapist for the purpose of maximum reduction of physical or mental disability and restoration of the Enrollee to his or her best functional level. Physical therapy services provided in home and

dressings, feeding and nutritional and environmental support functions. Personal care must be medically necessary, ordered by the Enrollee's physician and provided by a person qualified under NYS regulations in accordance with a PCSP.

Consumer Directed Personal Assistance Program (CDPAP)

The purpose of the Consumer Directed Personal Assistance Program is to permit chronically ill or physically disabled individuals receiving home care services under the medical assistance program greater flexibility and freedom of choice in obtaining such services. Assistance is provided for some or total assistance with personal care services, home health aide services and skilled nursing tasks by a consumer directed personal assistant under the instruction, supervision and direction of a member or the member's designated representative.

A Personal Assistant is an adult who provides consumer directed personal assistance to a member under the member's instruction, supervision and direction or under the instruction, supervision and direction of the member's designated representative. A member's spouse, parent or designated representative may not be the consumer directed personal assistant for that member; however, a consumer directed personal assistant may include any other adult relative of the member who does not reside with the member or any other adult relative who resides with the member because the amount of care the member requires makes such relative's presence necessary.

The plan must assess whether the individual is eligible for the program. The assessment process includes a physician's or practitioner order, a social assessment and a nursing assessment to determine if this is the appropriate level of assistance.

Dental Care

We believe that providing you with good dental care is important to your overall health. We offer dental care through Denta Quest as indicated in the provider network section. Covered **Dentistry** services includes but shall not be limited to preventive, prophylactic and other dental care, services and supplies, routine exams, prophylaxis, oral surgery, and dental prosthetic and orthotic appliances required to alleviate a serious health condition including one which affects employability.

How to Access Dental Services:

Dental services are administered through Denta Quest who has a large network of dental providers that can meet your personal needs.

To find a dentist in your area, call 1-844-824-2024 or TTY/TDD 1-800-466-7566 and tell them you are a member of Nascentia Health Options. The operator will give you a list of dentists near you that you can choose from.

For further assistance in arranging dental services you can contact your Care Manager and they will help you schedule an appointment.

Make sure you bring your Member ID card with you to your appointment so the dentist can